



NORTH CAROLINA  
ADMINISTRATIVE OFFICE  
*of the* COURTS

## **Jury Excusals and Exemptions**

[S.L. 2015-210]

April 25, 2016





## Introduction

Session Law 2015-210 changed laws related to jury service to allow full-time out-of-state students to opt out of jury service, and required the North Carolina Administrative Office of the Courts (NCAOC) to evaluate jury exemptions and excusals. Specifically, section 4 provides as follows:

**SECTION 4.** The Administrative Office of the Courts, in consultation with the North Carolina Conference of Clerks of Superior Court, shall study excusals from jury service. It shall consider all of the current exemptions from jury service and examine whether or not excusals should be granted for prospective jurors who are on work assignment outside the State of North Carolina. The Administrative Office of the Courts shall report its findings and any recommendations to the Joint Legislative Oversight Committee on Justice and Public Safety and the General Assembly upon the convening of the 2016 Regular Session of the 2015 General Assembly.

NCAOC respectfully submits this report pursuant to the legislative mandate.

## Current Landscape

Article I of the North Carolina Constitution guarantees litigants the right of jury trial in criminal and civil matters, and secures citizens the right to serve on juries without regard to sex, race, color, religion, or national origin. State statute declares “jury service is the solemn obligation of all qualified citizens, and that excuses from the discharge of this responsibility should be granted only for reasons of compelling personal hardship or because requiring service would be contrary to the public welfare, health, or safety.”<sup>i</sup>

Chapter 9 of the North Carolina General Statutes governs the process of jury service. NCAOC has no direct role in this process, but does provide technical assistance to judges and clerks carrying out their assigned duties under the law.<sup>ii</sup> The general process requires the three-member local jury commission to prepare a prospective list of jurors subject to serve over a two year period,<sup>iii</sup> and review by the local commission to strike any potential jurors with statutory disqualifications.<sup>iv</sup> Jurors from the final master list are randomly summoned to service for particular upcoming sessions of court.<sup>v</sup> Once summoned, a qualified juror still may apply to be excused under procedures adopted by the local superior or district court.<sup>vi</sup> A judge granting an excuse from a current panel can direct that the name be added to a subsequent panel without being randomly drawn again.

The decision to allow a request for jury excusal belongs to the chief district court judge, who may assign the duty among the other district court judges. Since 1981, the General Statutes have authorized the chief district judge to delegate the decision to the local trial court

administrator in those districts which have that office.<sup>vii</sup> In some districts, judges have adopted procedures allowing clerks to meet with jurors seeking to be excused, and grants excusals based on clerk recommendations.

The 2015 legislation created an automatic excuse for full-time out-of-state students, upon application with supporting documentation,<sup>viii</sup> and allows the applicant to appear in writing without regard to the local procedure. Previously the ability to apply for excuse in writing without appearing in person was guaranteed only to persons 72 years of age or older, or to persons with disabilities.<sup>ix</sup> However, prospective jurors 72 or older or claiming disabilities are not automatically excused from service, but have a right to a separate procedure to apply without appearing in person.<sup>x</sup>

The validity of a jury verdict may be legally attacked based on the process of preparing the master list or summoning the panel, but requires a showing of corrupt intent, discrimination, or irregularities which affected the actions of the jurors actually drawn and summoned.<sup>xi</sup> A jury must represent a fair cross section of the community, and generally no distinctive group may be systematically excluded if it has defining attributes, cohesive and distinctive ideas, attitudes, or experiences, and a community of interest not represented in other segments of the populace.<sup>xii</sup> For example, a jury process in a county with an adult black population of 45.5 percent but a jury list of only 4.5 percent black members presents a prima facie case of systematic exclusion from jury service.<sup>xiii</sup> However, “young people” aged 18 to 29 has been found not to be such a distinctive group for determination of whether a jury panel is a fair cross section of the community.<sup>xiv</sup>

### **Recommended Changes**

NCAOC has reviewed the statutory scheme for excusals from jury service and applicable case law, and has consulted with elected clerks of superior court through their conference about experience in the field. The wide perception in the field is that judges appropriately exercise discretion balancing the duty of citizens to provide jury service with the existing statutory guidance to allow for compelling personal hardship and ensuring the public welfare, health, and safety, and no statutory change is recommended. The courts must guarantee the preservation of the right to jury trial provided in the state constitution, including the guarantee that the jury process represents a fair cross section of the community. A prescriptive approach that attempts to prejudge defined categories of compelling personal hardship or risks to health, safety or welfare, without regard to individual circumstances, may lead to successful post-judgment litigation.

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<sup>i</sup> N.C.G.S. 9-6(a).

<sup>ii</sup> N.C.G.S. 9-1 requires that each county have a three member jury commission, appointed one each by the senior resident superior court judge, the clerk of the superior court, and the county commissioners.

<sup>iii</sup> N.C.G.S. 9-2 requires the local jury commissions at least biennially to prepare master lists of at least 500 prospective jurors, based upon a random selection of names taken at minimum from registered voter lists and drivers license records.

<sup>iv</sup> Disqualifications under G.S. 9-3 from the master list include recent jury service, mental incompetence, and conviction of a felony without a restoration of rights.

<sup>v</sup> N.C.G.S. 9-5.

<sup>vi</sup> N.C.G.S. 9-6.

<sup>vii</sup> N.C.G.S. 9-6(b); Session Laws 1981-430, s. 2. Session Laws 1988-1037, s. 47 authorized the chief district court judge to make this delegation for individual counties within a district without including the whole district.

<sup>viii</sup> N.C.G.S. 9-6(b1).

<sup>ix</sup> N.C.G.S. 9-6.1.

<sup>x</sup> See *State v. Elliott*, 360 N.C. 400, 628 S.E.2d (2006) (in murder case the trial court did not abuse its discretion in refusing a G.S. 9-6.1 request to excuse a juror for her age).

<sup>xi</sup> *State v. Massey*, 316 N.C. 558, 342 S.E.2d 811 (1986)

<sup>xii</sup> *State v. Price*, 301 N.C. 437, 272 S.E.2d 103 (1980).

<sup>xiii</sup> *Parker v. Ross*, 330 F.Supp. 13 (E.D.N.C. 1971), *rev'd on other grounds*, 47 F.2d 1092 (4<sup>th</sup> Cir.1972).

<sup>xiv</sup> *Price*.

